

# **The Parthenon sculptures: a legal perspective**

By Andrew Dismore

## **1 Ownership: who do the sculptures belong to, in law?**

The issue of ownership of the Parthenon Sculptures (PS) has vexed politicians, museum curators, campaigners and the public for decades: but does it matter?

The way the PS came into the possession of the British Museum (BM) is a matter of relatively settled historical record. Lord Elgin removed them from the Parthenon under an Ottoman firman, the legal effect of which has been hotly disputed ever since.

The first argument is that the firman did not extend to the wholesale removal effected by Lord Elgin; and secondly, the Ottoman firman could not and did not lawfully allow the removal of the sculptures anyway.

Be that as it may, Lord Elgin shipped the sculptures to his London home. His expenses were substantial, and his subsequent financial difficulties led him to negotiate for the sale of his collections to the BM

In 1816, a House of Commons Select Committee considered the authority by which Lord Elgin's collection was acquired, the circumstances under which that authority was granted, the merit of the sculptures and the importance of making them public property and their value as objects of sale.

It adjudged the sculptures to have been properly acquired, both fit for and worthy of public purchase, and recommended a purchase price of £35,000, less than half the expenditure claimed by Lord Elgin.

The Report was debated in the House of Commons. The House voted the money for the purchase by 82 votes to 30, and legislation was then passed giving effect to the recommendations. The collection was purchased from public funds and vested in the Trustees of the BM.

The BM (and UK government) case is that the trustees of the British Museum are the legal owners of the Elgin Marbles. They were vested in the BM by the Act of Parliament in 1816, and that is it.

There have been suggestions that the BM's ownership could be challenged, The only way of resolving the ownership issue definitively would be a court declaration or judgment, but anyone attempting to do so would face insurmountable obstacles, in my view.

But who owned the PS before Lord Elgin took them? Greece did not exist as a country, nor for that matter did it, when the sculptures were made, as Greece then was a collection of city

states. The legal authority was almost certainly vested in the Ottomans and Greece did not emerge as a nation state till the 1820s.

It would be necessary to establish and then apply the law of property and of contract as it stood in 1816. Anyone challenging ownership would need to prove the museum had not lawfully acquired the PS. A major obstacle is the 200 years delay and the law of limitation. Whilst the limitation period might be arguably disapplied from 1816, it would be a strong defence to say the clock started running at the latest when the restitution campaign began in earnest in the 1980s and started claiming ownership on behalf of Greece- and the limitation period would long have expired since then.

The basic principles of the relevant English law have not substantially changed. It would be necessary to prove the 1816 Government was not a bona fide purchaser (BFP) for value without notice –an innocent party who purchases property without notice of any other party's claim to the title of that property. Even when a party fraudulently sells property to a BFP, that BFP will usually take good title to the property despite the competing claims of the other party. Bearing in mind the extensive parliamentary debate examining this precise issue at the time, this would be very difficult to establish. And ownership was not challenged by the Ottomans before the parliamentary committee.

And as the purchase and transfer was by Act of Parliament, any challenge would face the overwhelming hurdle of the supremacy of Parliament, too. Parliament has overridden private property rights for the public good, including without compensation on other occasions.

Any legal challenge could expect to end up in the Supreme Court. Given the analysis above, it is pretty well a lost cause, to think the Court would find any other outcome than that the PS belong to the BM as English law would be applied.

## **2 Ownership: does it matter?**

In the end, such a legal challenge would be an expensive and time consuming side show, as the political debate has moved on. Moreover if there were to be a case and it failed, such a defeat in the courts would be a major setback for the mainstream campaign. Even if the claim was successful, there would then be a conflict between the courts and the statute and consequent powers of the trustees, so a substantive change of the law through statute would probably still be required.

The real issue is now generally seen by campaigners both in Greece and the UK as not to be who owns the PS, but where they are physically located, with suggestions about loans of the PS or a BM annex in Athens as part of the new Parthenon Museum, for example. The moral and political arguments about this point are for other presentations at the colloquy and not for this paper- but resolving the issue of location raises legal issues which are at the very heart of the debate.

The major obstacle to overcome is the British Museum Act 1963, under which the PS collection is held.

### **3 The legislation: a) The British Museum Act 1963**

The Act is reproduced in full in its current form as an appendix to this paper.

The Act was passed in part to provide for the separation of the Natural History Museum and the separation of the collections between the BM and the NHM.

In summary, the relevant provisions are:

The BM Trustees have power to enter into contracts and other agreements, to acquire and hold and land and other property, and to do all other things that appear to them necessary or expedient for the purposes of their functions.

The Trustees must keep the collections of the Museum within its authorised repositories, except if it is expedient to remove objects temporarily for any purpose connected with the administration of the Museum and the care of its collections.

The Trustees, so far as appears to them to be practicable, must ensure the objects in the Museum (including reserve collection objects) are made available for inspection by members of the public.

The Trustees may lend for public exhibition (whether in the United Kingdom or elsewhere) any object comprised in the collections of the Museum: provided that the Trustees shall have regard to the interests of students and other persons visiting the Museum, to the physical condition and degree of rarity of the object in question, and to any risks to which it is likely to be exposed.

Objects vested in the Trustees as part of the collections shall not be disposed of by them otherwise than under section 5 or 9 of this Act [or section 6 of the Museums and Galleries Act 1992]

Section 5 provides that the Trustees may sell, exchange, give away or otherwise dispose of any object vested in them and comprised in their collection [only] if –

- (a) the object is duplicate of another object, or
- (b) the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or
- (c) in the opinion of the Trustees the object is unfit to be retained in the collections of the Museum and can be disposed of without

detriment to the interests of students:

(Section 9 is not relevant as it stands, as this now only relates to transfers between the BM and NHM)

#### **4 The legislation: b) the Museums and Galleries Act 1992; the Human Tissue Act 2004; and the Holocaust (Return of Cultural Objects) Act 2009**

Section 6 of the Museums and Galleries Act 1992 allows the transfer of objects or related documents between institutions if the transfer is to any other body for the time being specified in Schedule 5 to the Act: relevant extracts are annexed to this paper, including the list of specified bodies, being major museums (including the BM) galleries etc., all situated in the UK.

The Human Tissue Act 2004 enables the trustees of the BM to de-accession human remains if it appears to them to be appropriate.

The Holocaust (Return of Cultural Objects) Act 2009, which was a private member's Bill I promoted, confers power to return certain cultural objects on grounds relating to events occurring during the Nazi era. It applies to a list of bodies, including the BM. A body to which the Act applies may transfer an object from its collections, if the Advisory Panel has recommended the transfer and the Secretary of State has approved the recommendation. The "Advisory Panel" considers claims which are made in respect of objects, and relate to events occurring during the Nazi era.

#### **5 The current legislation: summary of effect**

The legislation therefore forbids the BM to dispose of items except only in limited circumstances, such as duplication, printed material, or not worthy of being in its collection. It can voluntarily dispose of Holocaust looted art to its rightful owner, and can transfer to other major UK museums. Clearly none of these criteria apply to the PS.

The BM's main argument is that it is a "world museum", and the PS are integral to its story of the history of art and culture through the millennia. This is illustrated by the recent Radio 4 series, of BM director Sir Neil Macgregor, "the History of the World through a 100 objects" (incidentally I highly recommend it, in its own right). However, The BM has used its powers to dispose of other items. In March 2002, it was reported that the British Museum had sold some of its artefacts. The BM admitted selling 30 pieces of Benin bronze in the 1950s and 1960s. (The detail is not clear, but could well predate the 1963 Act so is of limited relevance as a precedent).

However, what is known is that the British Museum sold 21 duplicate prints in 1986 and a duplicate set of Hiroshige woodblock prints in 1995. Some 2,600 duplicate coins, medals and

badges and 117 duplicate western prints have been exchanged for similar material since 1972. Two bronze plaques from Benin were exchanged for a unique bronze horseman in the style of the Lower Niger Bronze industry in 1972. A relic of cannibalism, judged unfit to be retained in the Museum's collection was exchanged with Fiji for a collection of prehistoric sherds in 1975. In 1991, an English court recognised the legal personality of an Indian temple claiming the recovery of an idol, notwithstanding that it was incapable of accepting formally legal personality under English law.

Whilst the closest similarity is with the Benin Bronzes return, the facts of that case are different and can be made to fit the existing law. When they were taken from Africa in the 1870s, this was seen under the law as it then imperiously stood as either acquisition by right of conquest or war reparations.

Accordingly, this explains how we end up in the “pass the parcel” approach of the BM and Government, each saying it is the responsibility of the other. The British Museum considers that it is not permitted under its current statute to engage in negotiations to return objects (in the context of the PS). The introduction of any legislation to provide for the return of the Elgin marbles would be the responsibility of the Government.

It can however, lend to other museums, including overseas, in tightly controlled circumstances. It is arguable both ways, as to whether in fact the museum could lend the PS under these restrictions (access, condition, rarity, and risk).

## **6 changing the law: political will**

It is clear there is no current political will within the coalition government to change the law to overcome these statutory obstacles. When in opposition, their spokesperson said that the relationship between the Department and the British Museum is underpinned by a crucial arm's length principle whereby Ministers set the financial, administrative, legal and overall policy framework for public bodies, but those bodies have a considerable and proper measure of independence in individual decision making. It is a long-standing policy of successive Governments in the UK that decisions relating to museum collections are for museum trustees to take, and the Government do not intervene.

Nor was there any enthusiasm for changing the law under the previous Labour Government, though there was considerable support on the then Labour backbenches with one Early Day Motion (EDM- an expression of opinion on the backbenches only) attracting over 100 MPs' signatures, mainly Labour.

The Labour Government's view was that the sculptures were acquired legally and that they are best housed in the British Museum in a multi-cultural context, seen free of charge by up to 5 million visitors a year.... to be clear about the responsibility of the British Museum for the Sculptures. The Trustees have a statutory duty to protect their collections and this duty could only be over-ridden by primary legislation amending Section 5 of the British Museum Act 1963, relating to the disposal of objects in the collections.

## **7 drafting a Bill**

So whilst there is no immediate prospect of a reform of the law to enable the return of the PS to Greece, what would such a Bill look like? And what are the potential problems facing it? These can be categorised as both political and legal.

If a Bill is seen to be very specific and referring only to a particular private interest, for example referring only to the PS and their repatriation, there is a risk the Bill could be deemed to be hybrid.

A hybrid bill is a public Bill which affects the private interests of a particular person or organization. It is generally initiated by the Government on behalf of non-Parliamentary bodies such as local authorities and is treated like a private Bill for the beginning of its passage through Parliament. This gives individuals and bodies an opportunity to oppose the bill or to seek its amendment before a select committee in either or in both Houses. This procedure is long drawn out and very problematic, so it is important that any Bill cannot be seen to be hybrid, so it need to be as broadly drawn as possible, and certainly not just referring to the PS alone.

This then creates a political problem: the “floodgates” argument. One of the main arguments deployed against the PS return is that if the PS are returned, this will feed demands for other cultural objects to be repatriated too. The most obvious case is that of the Benin Bronzes, but no doubt we can all think of others. The BM strongly argues that removal of the marbles to Athens would encourage similar claims for other objects from other countries which would undermine the comparative principle at the heart of the British Museum's purpose.

A subset of this argument that reinforces it is the issue of ownership, deal with above.

Of course the political arguments about floodgates are somewhat spurious; there have been exceptions already, most notably the issue of holocaust restitution and human remains, which have not led to a long list of claims. The moral difference appears to be that the events leading to their inclusion in our national collections were more recent than Lord Elgin's depredations; and the legislation applies not just to the BM but a wider range of institutions. But any Bill that did not head this off would find it opposed in Parliament on these grounds.

A Bill also needs to overcome the problem of the relationship between the BM and Government: the “arms length” relationship that implies ministers cannot order the trustees what to do and that decisions as to the collection should be primarily for the trustees.

So the challenge for any Bill is to be sufficiently broad to avoid hybridity, yet sufficiently narrow to avoid these political problems.

## **8 The British Museum Act 1963 (Amendment) Bill: summary of the Bill**

As set out above, at present the British Museum is prevented by statute from disposing of objects in its collections except in very limited circumstances. A copy of the Bill is annexed to this paper. The Bill's purpose is to amend the British Museum Act 1963 to enable the British Museum to transfer to another institution, for public exhibition, any object from its collections, in certain circumstances, where public access is guaranteed.

The Bill is in two parts, first providing a more general power of transfer, having regard to the likely public access in the recipient institution, the interest of students and visitors to the museum, to the condition and rarity of the object, and any risks the object might face.

The second part of the Bill empowers the secretary of State to require the transfer, if in his opinion, certain circumstances are met.

Those circumstances can be summarised as:

- where the object would be more widely accessible to visitors than in the British Museum
- where it would be more appropriately displayed in the recipient institution than in the British Museum by reason of its historic links, or
- where the object came to form part of the collections of the British Museum in circumstances which make its retention in the collections undesirable or inappropriate.

To overcome the hybridity issue, the Bill confers these general powers without specific reference to the PS, but there is only one situation in which it might realistically apply: to repatriate the Parthenon Marbles to Greece.

So the Bill firstly empowers the BM trustees to effect a transfer by amending section 9 of the 1963 Act, overcoming the existing restrictions. And it is the case that the Bill provides for the Secretary of State to override the trustees, which it is accepted interferes with the arms length relationship, but does so in only limited circumstances and after consultation with the trustees. In the end, this has to be necessary, to provide the political impetus to effect a return of the PS.

The ownership issue is sidestepped by referring to transfer of the objects rather than arguing over rights of possession, but brings into play the circumstances of acquisition as one of the possible triggers to bring the powers in the Bill into play.

The Bill also provides that any transfer should be effected at the expense of the receiving institution, which protects the UK public purse- but may now present a serious obstacle, given the present economic crisis in Greece.

The Bill commenced its second reading debate on 15<sup>th</sup> May 2009, coincidentally on the same date as the Holocaust (Return of Cultural Objects) Act 2009, but whilst the latter Bill secured its second reading and went on to become law, the British Museum Act 1963 (Amendment)

Bill did not: it was “talked out” and has no immediate prospect of proceeding in the current Parliament.

Nevertheless, I would argue that it provides the best solution, to overcome the present legal obstacles should the parliamentary circumstances change, and is ready to take “off the shelf” in that eventuality.

The second reading debate is set out below.

### **9 British Museum Act 1963 (Amendment) Bill: Second Reading Debate**

**Mr. Andrew Dismore (Hendon) (Lab):** I beg to move, That the Bill be now read a Second time.

I suspect that I will not get the same consensus on this Bill, which, by happy coincidence, is back to back with my previous one—I think it will be a case of “won one, lost one” for me today. I accept that this Bill is a little more contentious than the Holocaust (Stolen Art) Restitution Bill, but it is nevertheless a relatively modest measure and aims to work in very limited circumstances.

The Bill’s purpose is to change the British Museum Act 1963 so that the British Museum can transfer to another institution, for public exhibition, any object from its collections, in limited circumstances—where public access is guaranteed, where the object

“would be more widely accessible to visitors...than in the British Museum”,

where it

“would be more appropriately displayed in the recipient institution than in the British Museum by reason of its historic links”,

or because the object

“came to form part of the collections of the Museum in circumstances which make its retention in the collections undesirable or inappropriate.”

That is a general power, but I can think of only one set of objects to which it could realistically relate: the Parthenon sculptures. The time has surely come for the Parthenon sculptures to be reunited in the brand new museum that has been built on the Acropolis in Athens and is due to open next month.

The issue is not who owns the sculptures, although they ended up in the British Museum through a very dubious history, but where they are best kept and displayed. In Athens, they would be reunited with the other half of the sculptures—those not taken by Lord Elgin over

200 years ago. Indeed, some of the marbles are literally cut in two, with half the body in London and half in Athens. They would be seen in their correct context, aligned with the Parthenon and in the right Mediterranean light. The argument for their return is popular with the British people, and Greece deserves its heritage back.

The Parthenon sculptures—some people call them the Elgin marbles—are a matter of national identity to Greece. I have travelled in Greece over many years. If one asks anyone with any mental image of Athens or Greece to name the first thing that comes to mind, it will be the Parthenon. That is true for visitors, and even more so for Greeks worldwide. The Greek Government take a phlegmatic approach. They are not arguing about how the sculptures came to the British Museum, how they were obtained by Lord Elgin, or who should own them. The argument is simply about their location so far from their original home; Greece has waived all its other claims.

The archaeological case is a strong one. The sculptures would be reunified in their original topographical, historical and cultural context. Contrary to popular understanding, not all the sculptures are in the British Museum. The frieze originally consisted of 111 panels, of which about 97 survive. Fifty-six are in the British Museum, 40 are still in situ or in the Acropolis museum, one is in the Louvre, and there are fragments in Copenhagen, Vienna and elsewhere. Of the original metopes, 39 are in situ or in the Acropolis museum, and only 15 are in the British Museum. Some sculptures are broken, with heads and torsos split between Athens and London. In the case of the torso of Poseidon, the front—what one might call the Poseidon six-pack—is in Athens, while his rear, shoulders and back are in London; he is split straight down the middle. To view the sculpture, one would have to travel between Athens and London, as 98 per cent. of it is split between them.

The Parthenon is the most important symbol of Greek cultural heritage, yet the sculptures are not properly displayed in the British Museum. They not only fail to appear to form a whole, which they do not, but are exhibited on the inside of a wall rather than on the outside. The new Acropolis museum intends to correct all this. The museum, now complete, is ready to re-house the marbles and will make sure that these unique objects are seen at their greatest advantage and close to their original position. The British Museum has always claimed that the sculptures were well cared for, but that is not the case. In the 1930s, they were cleaned, more or less with a Brillo pad and a wire brush, in the mistaken belief that they were originally brilliant white, and in doing so some of the residual ancient paint was taken off, as was the honey-coloured patina of ages.

The Parthenon cannot come to London. Reunification would be voluntary, and it would not entail ceding legal titles of ownership and rights. The new museum on the Acropolis opens on 20 June. It is on the same alignment as the Parthenon, slightly below it on the foothills of the Acropolis. It contains a shell of the same dimensions to enable the marbles to be displayed on an outer wall, in their proper relationship, with windows out on to the Parthenon, lit by Mediterranean light reflected in through them. *The Guardian* recently published a review of the museum, which says:

“Athens’s new museum is spectacular, even without its star exhibits...The new museum is undoubtedly going to be a huge tourist attraction. Its breathtaking design, with natural light flooding every corner, is a huge achievement in itself.”

What a gesture it would be if our country were at long last able to do the decent thing and return the Parthenon sculptures to their rightful home. Athens has been transformed over the past few years; as a regular visitor, I am astounded by how it has changed. The archaeological sites have been pedestrianised, linking them all together, including the new museum, and the restoration of the Acropolis and the Parthenon itself has gone extremely well.

Greece would not bring any other claims, but what is important is that the appalling block to a cultural exchange with Greece would end. We have seen objects and major collections lent to the UK from other places, but no major collections from Greece, and that is because of the dispute over the Parthenon sculptures. How wonderful it would be if, for example, we could see the Mycenaean treasures in the British museum, or some of the Macedonian objects from Philip the Great’s grave. How wonderful it would be if we could see some of the wonderful Minoan artefacts from Crete. We will never see any of those while the dispute continues.

Greece has made it clear that it would not leave our art galleries empty, and the time has now come. The population believe that, all the opinion polls show it, and when we have tested it through early-day motions there has been a majority in the House as well. The Government say that, ultimately, it is a matter for the trustees of the British Museum. I cannot agree. The trustees’ refusal so far to deal with this issue is adversely affecting our relations with Greece and our reputation around the world.

Greece made major concessions under the previous PASOK Government of George Papandreou, with Mr. Venizelos as Culture Minister, and those concessions have been carried forward by the current Greek Government. Their offer to provide a new home for the Parthenon sculptures on the Acropolis site is one that we should not and cannot refuse. Our Government should give the British Museum an extremely powerful steer to stop its dog-in-a-manger approach and allow the return of the marbles to Athens. My Bill would provide a mechanism to do that, and I hope that the House will accept that it is a moral, if not legal, obligation to return stolen goods back to where they belong 200 years later.

**Hugh Robertson (Faversham and Mid-Kent) (Con):** I start, as I did on the previous Bill, by congratulating the hon. Member for Hendon (Mr. Dismore) on introducing the Bill. I congratulate him also on his success with the previous Bill. As he correctly surmised, I suspect that I shall not be able to be quite as helpful on this occasion.

It might inform the debate if we considered for a moment the background details that affect the British Museum. It is one of the most visited attractions anywhere in the UK. Last year it had more than 6 million visits, which far exceeded the Department for Culture, Media and Sport target of 4.5 million. The year before there were a record 5 million visits. It is one of 22 museums and galleries that are sponsored by the Department and receive grant in aid. Of

those, 14 are described as nationals because they were founded by Acts of Parliament. The British Museum received just over £41.5 million in revenue last year and just over £3 million in capital grant in aid from the Department. The Department has just confirmed the level of funding that it will provide the museum with for the next three years.

As the Bill suggests, the British Museum was set up by Act of Parliament, back in 1753. It was the first national museum in the world. The collection that it houses spans 2 million years of human history and contains art and antiques from ancient and living cultures. Its aim is to hold, for the benefit and education of humanity, a collection representative of world cultures, and to ensure that the collection is housed in safety, conserved properly, curated, researched and exhibited.

The relationship between the Department and the British Museum is underpinned by a crucial arm's length principle whereby Ministers set the financial, administrative, legal and overall policy framework for public bodies, but those bodies have a considerable and proper measure of independence in individual decision making. When asked about the matter in Parliament, the right hon. Member for Barking the predecessor of the Under-Secretary of State for Culture, Media and Sport, the hon. Member for Stevenage (Barbara Follett), stated:

“It is a long-standing policy of successive Governments in the UK that decisions relating to museum collections are for museum trustees to take, and the Government do not intervene.”—[ *Official Report*, 5 February 2008; Vol. 471, c. 1040W.]

That is a principle with which we would wish to concur.

Under the British Museum Act 1963, which the Bill would amend, the trustees of the British Museum are the corporate body with the legal duty to hold the museum's collection and make it available to a worldwide audience. The museum is, of course, governed by a board of 25 trustees who are non-executive and unpaid.

On the disposal of artefacts from the British Museum, the trustees' general powers are limited to the disposal of objects that are duplicates, that are unfit to be retained, that have become useless for the museum's purposes and that are pre-1850 printed matter of which it holds photographic or other copies. Special new powers of disposal have been added to cater for special situations when those limitations have stood in the way of returning objects in response to acknowledged moral claims by former owners or their successors. One example of such a power, which the Human Tissue Act 2004 introduced, enables the trustees of the museum to de-accession human remains if it appears to them to be appropriate.

The Chairman of the Select Committee on Culture, Media and Sport, my hon. Friend the Member for Maldon and East Chelmsford (Mr. Whittingdale), noted in the Committee's report, “Caring for our Collections”:

“It seems probable that there will at some time in the future be legislation to confer another special power, so that national museums will be permitted to return items which have been ‘spoiled’. Legislation has been recommended by the Spoliation Advisory Panel, which was set up to resolve claims from people, or their heirs, who lost property during the Nazi era”—

as we discussed during the previous Bill’s debate—

“which is now held in UK national collections. It advises both the claimants and the institution where the object is held, as to what action may be taken. The Panel provides an alternative to legal action, aiming to achieve a solution that is fair and just to everyone involved, taking into account the moral issues of every case”.

However, the British Museum has a lending policy to allow its objects to be used in exhibitions elsewhere. Its trustees are able to make loans for the following reasons: first, to further knowledge, understanding and scholarship relating to the works in its care; secondly, to make the collections more widely accessible within the UK and throughout the world; thirdly, to increase national and international co-operation by the exchange of material and exhibitions; and, finally, to enhance the reputation of the British Museum and its good standing nationally and internationally.

The trustees of the British Museum make loans under powers conferred by section 4 of the 1963 Act, which is up for amendment today. The Act states that the British Museum may lend for public exhibition (whether in the United Kingdom or elsewhere) any object comprised in the collections of the Museum:

Provided that in deciding whether or not to lend any such object, and in determining the time for which, and the conditions subject to which, any such object is to be lent, the British Museum shall have regard to the interests of students and other persons visiting the Museum, to the physical condition and degree of rarity of the object in question, and to any risks to which it is likely to be exposed.”

Those points cover the background to the matter. However, five particular issues are worthy of consideration. First, we are concerned that if the Bill is passed, it will breach the arm’s length principle ensuring that Ministers of any party are not able to interfere with the day-to-day running of our national museums and galleries. Secondly, we believe that the British Museum is unique among world museums, in that its collection is able to tell the whole history of human civilisation under one roof. It therefore seems wrong to remove the Parthenon sculptures and put at risk that vital collection and that history.

Thirdly, it is important that the Parthenon sculptures stay at a museum where they are properly preserved and available to a world public for free, seven days a week. Indeed, by chance, I went to see them myself last Sunday. Fourthly, the British Museum trustees already have a power to loan the sculptures for a period in response to an appropriate request. I am

not aware of any ongoing discussions along those lines with the trustees, but, indeed, that power already exists. Finally, a key part of encouraging people to visit museums is ensuring that our museums, particularly nationally, have high-quality exhibits.

For all those reasons, I have grave reservations about the Bill. I know that the Minister wants a couple of minutes to give her winding-up speech, so I shall sit down, but before I do it would be wrong of me not to say that I am afraid that my party too has grave reservations about the Bill.

2.29 pm

**The Parliamentary Under-Secretary of State for Culture, Media and Sport (Barbara Follett):** Thank you, Mr. Deputy Speaker—

**Mr. Deputy Speaker (Sir Michael Lord):** Order.

## **10 Appendices: the statutory provisions**

### **Relevant extracts from:**

#### **BRITISH MUSEUM ACT 1963**

*An Act to alter the composition of the Trustees of the British Museum, to provide for the separation from the British Museum of the British Museum (Natural History), to make new provision with respect to the regulation of the two Museums and their collections in place of that made by the British Museum Act 1753 and enactments amending or supplementing that Act, and for purposes connected with the matters aforesaid.*

### **2 General powers of Trustees**

The Trustees of the British Museum shall have power, subject to the restrictions imposed on them by virtue of any enactment (whether contained in this Act or not), to enter into contracts and other agreements, to acquire and hold and land and other property, and to do all other things that appear to them necessary or expedient for the purposes of their functions.

### **3 Keeping and inspection of collections**

(1) Subject to the provisions of this Act, it shall be the duty of the Trustees of the British Museum to keep the objects comprised in the collections of the Museum within the authorised repositories of the Museum, except in so far as they may consider it expedient to remove them temporarily for any purpose connected with the administration of

the Museum and the care of its collections.

(2) Where it appears to the Trustee that any such objects cannot conveniently be kept within the authorised repositories, they may store them at other premises in Great Britain if satisfied that they can be stored in those premises without detriment to the purposes of the Museum.

(3) It shall be the duty of the Trustees to secure, so far as appears to them to be practicable, that the objects comprised in the collections of the Museum (including objects stored under the preceding subsection) are, when required for inspection by members of the public, made available in one or other of the authorised repositories under such conditions as the Trustees think fit to impose for preserving the safety of the collections and ensuring the proper administration of the Museum.

(4) Objects vested in the Trustees as part of the collections of the Museum shall not be disposed of by them otherwise than under section 5 or 9 of this Act [or section 6 of the Museums and Galleries Act 1992].

#### **4 Lending of objects**

The Trustees of the British museum may lend for public exhibition (whether in the United Kingdom or elsewhere) any object comprised in the collections of the Museum:

Provided that in deciding whether or not to lend any such object, and in determining the time for which, and the conditions subject to which, any such objects is to be lent, the Trustees shall have regard to the interests of students and other persons visiting the Museum, to the physical condition and degree of rarity of the object in question, and to any risks to which it is likely to be exposed.

#### **5 Disposal of objects**

(1) The Trustees of the British Museum may sell, exchange, give away or otherwise dispose of any object vested in them and comprised in their collection if -

- (a) the object is duplicate of another object, or
- (b) the object appears to the Trustees to have been made not earlier than the year 1850, and substantially consists of printed matter of which a copy made by photography or a process akin to photography is held by the Trustees, or
- (c) in the opinion of the Trustees the object is unfit to be retained in the collections of the Museum and can be disposed of without detriment to the interests of students:

Provided that where an object has become vested in the Trustees by virtue of a gift or bequest the powers conferred by this subsection shall not be

exercisable as respects that object in a manner inconsistent with any condition attached to the gift or bequest.

(2) The Trustees may destroy or otherwise dispose of any object vested in them and comprised in their collections if satisfied that it has become useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation by destructive organisms.

(3) Money accruing to the Trustees by virtue of an exercise of the powers conferred by this section [or section 6 of the Museums and Galleries Act 1992] shall be laid out by them in the purchase of objects to be added to the collections of the Museum.

## **9 Transfers to other institutions**

(1) Any movable property vested in the Trustees of either Museum may be transferred by them to the Trustee of the other Museum

# **BRITISH MUSEUM ACT 1963 (AMENDMENT) BILL**

## **A B I L L**

TO

Amend the British Museum Act 1963 to permit the transfer of artefacts in the British Museum; to confer powers on the Secretary of State to require the transfer of artefacts in specified circumstances; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **1 Amendment of British Museum Act 1963**

(1) In section 9 of the British Museum Act 1963 (c. 24) (transfers to other institutions) after subsection (1) insert—

“(2) The Trustees of the British Museum may transfer to another institution for public exhibition any object comprised in the collections of the Museum: Provided that in deciding whether or not to transfer any such object, the Trustees shall have regard to the probable conditions of public access to the object in the recipient institution, to the interests of students and other persons visiting the Museum, to the physical condition and degree of rarity of the object in question, and to any risks to which it is likely to be exposed.

(3) The Secretary of State may require the Trustees of the British Museum to transfer to another institution for public exhibition any object comprised in the

collections of the Museum if, in the opinion of the Secretary of State, the object—

- (a) would be more widely accessible to visitors in the recipient institution than in the British Museum,
- (b) would be more appropriately displayed in the recipient institution than in the British Museum by reason of its historic links with the country or region in which that institution is situated, or
- (c) came to form part of the collections of the Museum in circumstances which make its retention in the collections undesirable or inappropriate.

(4) Before exercising the power in subsection (3) the Secretary of State must—

- (a) consult the Trustees of the British Museum, and
- (b) have regard to the considerations set out in the proviso to subsection (2).

(5) A transfer under subsection (2) or (3) shall be effected only with the consent and at the expense of the recipient institution.”

## **2 Short title and commencement**

(1) This Act may be cited as the British Museum Act 1963 (Amendment) Act 2010.

(2) This Act comes into force at the end of the period of 2 months beginning with the day on which this Act is passed.

### **Relevant extracts from:**

#### **MUSEUMS AND GALLERIES ACT 1992**

### **6 Transfer of objects or related documents between institutions.**

(1) Any body for the time being specified in Part I of Schedule 5 to this Act may, by way of sale, gift or exchange, transfer an object the property in which is vested in them and which is comprised in their collection, if the transfer is to any other body for the time being specified in either Part of that Schedule.

(2) This section applies in relation to a document as it applies in relation to an object other than a document.

(3) Where the property in an object has become vested in a body subject to a trust or condition, the power conferred by subsection (1) above shall be exercisable in a manner inconsistent with the trust or condition if the person who first imposed the trust or condition has, or his personal representatives or (in Scotland) his executors

have, consented to the exercise of the power in that manner.

(4) Where a body in whom an object has become vested subject to a trust or condition transfers the object under this section to another body, the object shall be held by that other body subject to the same trust or condition.

(5) The powers conferred on a body by subsection (1) above are in addition to any other powers of transfer which the body may have.

(6) The Secretary of State may by order amend Schedule 5 to this Act by adding any body in the United Kingdom to those for the time being specified in that Schedule.

(7) The power to make an order under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(8) The power of the Secretary of State to make an order under subsection (6) may, for the purpose of this section's application to transfers of objects by bodies in Scotland, be exercised separately.

## **Schedule 5**

### **Part I Transferors and transferees**

The Board of Trustees of the Armouries

The British Library Board

The Trustees of the British Museum

The Trustees of the Imperial War Museum

The Board of Governors of the Museum of London

The Board of Trustees of the National Gallery

The Board of Trustees of the National Galleries of Scotland

The Board of Trustees of the National Library of Scotland

The Trustees of the National Maritime Museum

The Board of Trustees of the National Museums and Galleries on Merseyside

The Board of Trustees of the National Museums of Scotland

The Board of Trustees of the National Portrait Gallery

The Trustees of the Natural History Museum

The Board of Trustees of the Science Museum  
The Board of Trustees of the Tate Gallery  
The Board of Trustees of the Victoria and Albert Museum  
The Historic Buildings and Monuments Commission for England

## **Part II Transferees only**

Court of Governors of the National Library of Wales  
The Council of the National Museum of Wales  
The Trustees of the Ulster Museum  
The Trustees of the Ulster Folk and Transport Museum  
The Board of Trustees of The National Museums and Galleries of Northern Ireland  
Historic Royal Palaces  
The National Trust for Places of Historic Interest or Natural Beauty

## **HOLOCAUST (RETURN OF CULTURAL OBJECTS)ACT 2009**

An Act to confer power to return certain cultural objects on grounds relating to events occurring during the Nazi era.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Bodies to which this Act applies**

This Act applies to the following bodies—  
The Board of Trustees of the Armouries,  
The British Library Board,  
The Trustees of the British Museum,  
The Trustees of the Imperial War Museum,  
The Board of Trustees for the National Galleries of Scotland,  
The Board of Trustees of the National Gallery,  
The Trustees of the National Library of Scotland,  
The Trustees of the National Maritime Museum,  
The Board of Trustees of the National Museums and Galleries on Merseyside,  
The Board of Trustees of the National Museums of Scotland,  
The Board of Trustees of the National Portrait Gallery,

The Trustees of the Natural History Museum,  
The Board of Trustees of the Royal Botanic Gardens, Kew,  
The Board of Trustees of the Science Museum,  
The Board of Trustees of the Tate Gallery,  
The Board of Trustees of the Victoria and Albert Museum,  
The Board of Trustees of the Wallace Collection.

## **2 Power to return victims' property**

- (1) A body to which this Act applies may transfer an object from its collections if the following conditions are met.
- (2) Condition 1 is that the Advisory Panel has recommended the transfer.
- (3) Condition 2 is that the Secretary of State has approved the Advisory Panel's recommendation.
- (4) The Secretary of State may approve a recommendation for the transfer of an object from the collections of a Scottish body only with the consent of the Scottish Ministers.
- (5) "Scottish body" means—  
The Board of Trustees for the National Galleries of Scotland,  
The Trustees of the National Library of Scotland,  
The Board of Trustees of the National Museums of Scotland.
- (6) The power conferred by subsection (1) does not affect any trust or condition subject to which any object is held.
- (7) The power conferred by subsection (1) is an additional power.

## **3 "Advisory Panel"**

- (1) For the purposes of this Act "Advisory Panel" means a panel for the time being designated by the Secretary of State for those purposes.
- (2) The Secretary of State may designate a panel for the purposes of this Act only if the panel's functions consist of the consideration of claims which—
  - (a) are made in respect of objects, and
  - (b) relate to events occurring during the Nazi era.
- (3) "Nazi era" means the period—
  - (a) beginning with 1 January 1933, and
  - (b) ending with 31 December 1945.

## **4 Short title, extent, commencement and sunset**

- (1) This Act may be cited as the Holocaust (Return of Cultural Objects) Act 2009.
- (2) This Act extends to—
  - (a) England and Wales, and
  - (b) Scotland.
- (3) The preceding sections of this Act come into force on such day as the Secretary of State may by order appoint.
- (4) An order may make different provision for different purposes.
- (5) Before appointing a day for the coming into force of the preceding sections of this Act so far as they relate to Scottish bodies the Secretary of State must consult the Scottish Ministers.
- (6) "Scottish body" has the meaning given by section 2(5).
- (7) This Act expires at the end of the period of 10 years beginning with the day on which it is passed.

